

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DISTRICT

STEVE HANEY, Plaintiff, vs. AMERICAN FAMILY MUTUAL INSURANCE COMPANY, Defendant.	Civil Case No. 16-4113 DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S CLAIM FOR BAD FAITH (COUNT II) AND REQUEST FOR PUNITIVE DAMAGES (COUNT III) PURSUANT IN PART TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)
---	---

COMES NOW the Defendant, American Family Mutual Insurance Company (“AFMIC”), through undersigned counsel, and respectfully submits the following Motion to Dismiss Plaintiff’s Claim for Bad Faith (Count II) and Request for Punitive Damages (Count III) (“Motion to Dismiss”) pursuant in part to Federal Rule of Civil Procedure 12(b)(6).

1. The above captioned-action involves a simple contract dispute concerning whether Plaintiff is entitled to benefits under a homeowner’s insurance policy he purchased from AFMIC. Indeed, Plaintiff’s own Complaint merely sets forth allegations stating, at most, that there is a disagreement between the parties regarding the degree to which the roof of Plaintiff’s home was damaged by a hailstorm which occurred in June 2014.

2. Notwithstanding the simple and narrow scope of Plaintiff’s specific factual allegations, Plaintiff’s Complaint asserts a claim for bad faith (Count II) and a request for punitive damages (Count III).

3. Plaintiff’s Complaint alleges no specific factual allegations suggesting that AFMIC engaged in bad faith or malicious conduct during the course of its investigation,

evaluation or handling of Plaintiff's insurance claim. Rather, Plaintiff's bad faith claim and request for punitive damages are premised solely on conclusory allegations, formulaic recitations of the elements of Plaintiff's bad faith claim, and reckless insinuations.

4. Plaintiff's bad faith claim and request for punitive damages are not supported by sufficient, specific factual allegations that allow the court to draw a reasonable inference that AFMIC is liable for the misconduct alleged and therefore fail to satisfy the federal pleading requirements set forth in Federal Rules of Civil Procedure 8(a)(2) and 9(b). Accordingly, Plaintiff's bad faith claim and request for punitive damages should be dismissed.

5. AFMIC has filed Defendant's Brief in Support of its Motion to Dismiss and incorporates it here by this reference as if fully set forth herein.

WHEREFORE, AFMIC respectfully requests that this Court dismiss Plaintiff's bad faith claim and request for punitive damages with prejudice and enter judgment in AFMIC's favor with respect to these claims.

DATED: September 27, 2016

MEYERS BILLION, LLP

By: /s/ Steven J. Morgans
Steve J. Morgans
PO Box 1085
Sioux Falls, SD 57101-1085
T: (605) 336-3700
smorgans@meyersbillion.com
Attorney for Defendant American
Family Mutual Insurance Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically with the Clerk of Court through ECF and that ECF will send a notice of electronic filing to the following:

Derek A. Nelsen
dnelsen@fullerandwilliamson.com

Eric T. Preheim
epreheim@fullerandwilliamson.com

on this 27th day of September, 2016.

/s/ Steve Morgans

Steven J. Morgans